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U.S. Department of Justice



Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 14, 1988

Honorable Louis Stokes
Chairman
House Permanent Select Committee
on Intelligence
U. S. House of Representatives
Washington, DC 20515-6415

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on H.R. 4387, the "Intelligence Authorization Act, Fiscal Year 1989," as reported out of conference. The bill as presently drafted raises an issue of serious constitutional concern.

The Act contains extensive reporting requirements with respect to the Inspector General of the Central Intelligence Agency. Pursuant to proposed Section 504, section 17 (d), the Director must also report on any decision "to prohibit the Inspector General from initiating, carrying out, or completing any audit, inspection, or investigation within the Central Intelligence Agency" Section 17 (e) would require the Director of the Agency to report to specified committees of Congress "any . . . decision made by the Director . . . which would substantially affect the ability of the Inspector General to carry out his duties and responsibilities," and further to report "the position of the Inspector General with respect to such decision"

The requirements, in particular the disclosure of Inspector General recommendations and of potentially opposing views within the executive branch, impermissibly interfere with the President's control over the deliberative processes of the executive branch. For example, Section 17(e) clearly calls for the Director to report the Inspector General's position with respect to certain decisions by the Director, even if that position differs from the Director's. These requirements run counter to the President's authority as head of the unitary executive branch to "take Care that the Laws be faithfully executed," U.S. Constitution, Article II, section 3, and to coordinate and supervise his subordinates. They also infringe upon his ability to have the executive branch speak with one voice to Congress. See generally Myers v. United States, 272

U.S. 52, 163-64 (1926); Congress Construction Corp. v. United States, 314 F.2d 927, 930-32 (Ct. Cl. 1963).¹

The Department understands that our constitutional concerns were in fact communicated in detail to the staff of the Senate Intelligence Committee by representatives of the Central Intelligence Agency, and were mentioned in the Statement of Administration Policy on S. 2366.

We believe that these constitutional problems could be resolved through fairly simple, but important, amendments. We urge the Congress to revise the bill accordingly before it is presented to the President.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,



Thomas M. Boyd
Acting Assistant Attorney General

cc: Representative Henry Hyde

¹ We are of course aware that provisions similar to those contained in Section 504 appear in the Inspector General Act amendments (S. 908) currently being considered by Congress, and we have objected to those provisions on constitutional grounds as well.